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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Aretha F.,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-18-2226-PHX-DGC

ORDER

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16 Plaintiff Aretha F. seeks review under 42 U.S.C. § 405(g) of the final decision of
17 the Commissioner of Social Security, which denied her disability insurance benefits and
18 supplemental security income under sections 216(i), 223(d), and 1614(a)(3)(A) of the
19 Social Security Act. The Commissioner concedes that the Administrative Law Judge’s
20 (“ALJ”) decision was erroneous and requests a remand for further proceedings. Doc. 17.
21 Because the Court finds no serious doubts as to Plaintiff’s continued disability, the ALJ’s
22 decision will be vacated and the matter remanded for an award of benefits.

23 **I. Background.**

24 Plaintiff is a 40-year-old female who previously worked as an assistant teacher, a
25 dog groomer, a journalist, and a morning show producer. A.R. 56-59. On February 9,
26 2016, she applied for disability insurance benefits and supplemental security income,
27 alleging disability beginning December 31, 2015. A.R. 16. On February 7, 2018, Plaintiff
28 and a vocational expert (“VE”) testified at a hearing before the ALJ. *Id.* On March 23,

1 2018 the ALJ found that Plaintiff was disabled from December 31, 2015 through
2 January 29, 2018, but that she was able to work as of January 30, 2018. A.R. 33. The
3 Appeals Council denied Plaintiff's request for review, making the ALJ's decision the
4 Commissioner's final decision. A.R. 1-3.

5 The Court reviews only those issues raised by the party challenging the ALJ's
6 decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001).

7 **II. The ALJ's Five-Step Evaluation Process.**

8 To determine whether a claimant is disabled for purposes of the Social Security Act,
9 the ALJ follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the
10 burden of proof on the first four steps, and the burden shifts to the Commissioner at step
11 five. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). To establish disability, the
12 claimant must show that (1) she is not currently working, (2) she has a severe impairment,
13 and (3) this impairment meets or equals a listed impairment or (4) her residual functional
14 capacity ("RFC") prevents her performance of any past relevant work. If the claimant
15 meets her burden through step three, the Commissioner must find her disabled. If the
16 inquiry proceeds to step four and the claimant shows that she is incapable of performing
17 past relevant work, the Commissioner must show at step five that the claimant is capable
18 of other work suitable for her RFC, age, education, and work experience. 20 C.F.R.
19 § 404.1520(a)(4).

20 At step one, the ALJ found that Plaintiff met the insured status requirements of the
21 Social Security Act through March 31, 2022, and that she has not engaged in substantial
22 gainful activity since December 31, 2015. A.R. 20. At step two, the ALJ found that
23 Plaintiff has the following severe impairments: depression, post-traumatic stress disorder
24 (PTSD), ETOH use disorder, fibromyalgia, radiculopathy, degenerative disc disease,
25 foraminal stenosis, and obesity. *Id.* at 19. At step three, the ALJ determined that Plaintiff
26 does not have an impairment or combination of impairments that meets or medically equals
27 an impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Pt. 404. *Id.* At step four,
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1 the ALJ found that Plaintiff has the following RFC for December 31, 2015 through
2 January 29, 2018:

3 [Plaintiff can] perform sedentary work as defined in 20 CFR 404.1567(a) and
4 416.967(a) with the following limitations: the claimant should avoid
5 climbing ladder/ropes/scaffolds; the claimant can occasionally climb
6 ramps/stairs; the claimant can frequently bend, stoop, kneel, balance, crouch
7 and crawl; the claimant should avoid all hazards; the claimant is capable of
8 performing jobs that have a reasoning level 3 or below; the claimant can have
occasional interaction with public, coworkers and supervisors; the claimant
will be absent from work more than 1 day per month.

9 *Id.* at 24-25. The ALJ found that Plaintiff is unable to perform any past relevant work. *Id.*
10 at 26. The ALJ then determined that, from December 31, 2015 through January 29, 2018,
11 there were no jobs that existed in significant numbers in the national economy that the
12 claimant could have performed. *Id.* But the ALJ found that Plaintiff's disability ended on
13 January 30, 2018 because the record reveals medical improvement in her symptoms of
14 depression and overall joint and body pain. A.R. 30.

15 Once an ALJ finds a claimant disabled, the ALJ follows an eight-step sequential
16 evaluation to determine whether a claimant's disability continues through the date of the
17 decision. *See* 20 C.F.R. § 404.1594(f)(1)-(8). The ALJ determines whether: (1) the
18 claimant is engaging in substantial gainful activity, (2) the claimant has an impairment or
19 combination of impairments which meets or medically equals the severity of a listed
20 impairment, (3) medical improvement has occurred, (4) medical improvement is related to
21 ability to work, (5) an exception to medical improvement applies, and (6) whether all the
22 claimant's current combined impairments are severe. The ALJ then assesses (7) the
23 claimant's RFC based on current impairments and determines whether he can perform past
24 relevant work, and (8) whether the claimant can perform other work that is suitable for his
25 RFC, age, education, and work experience. *Id.*

26 The ALJ found that Plaintiff's medical impairment was related to her ability to work
27 because there has been an increase in her residual functional capacity. A.R. 30. Beginning
28 January 30, 2018, the ALJ assigned Plaintiff the following RFC:

1 [Plaintiff can] perform sedentary work as defined in 20 CFR 404.1567(a) and
2 416.967(a) with the following limitations: the claimant can occasionally
3 climb ramps/stairs; the claimant can frequently bend, stoop, kneel, balance,
4 crouch and crawl; the claimant should avoid all hazards; the claimant is
5 capable of performing jobs that have a reasoning level 3 or below; the
claimant can have occasional interaction with the public, coworkers and
supervisors.

6 A.R. 31. The ALJ found that Plaintiff was still unable to perform past relevant work, but
7 that jobs exist in significant numbers in the national economy that Plaintiff can perform,
8 such as document preparer, surveillance system monitor, and assembly-bench hand.
9 A.R. 32-33.

10 **III. Analysis.**

11 Plaintiff argues that the ALJ's decision is defective for three reasons: (1) the ALJ
12 erred by finding Plaintiff's condition improved on January 29, 2018; (2) the ALJ erred in
13 rejecting the opinion of Dr. Chaudhary, Plaintiff's treating physician; and (3) the ALJ erred
14 in finding Plaintiff only partially credible. Doc. 13 at 1. Plaintiff seeks reversal and a
15 remand for benefits. *Id.* at 13-14. The Commissioner agrees that the ALJ erred on all three
16 reasons and requests a remand for further proceedings. Doc. 17 at 6. The sole issue before
17 this Court is the scope of the remand.

18 **A. The Improperly Credited Evidence.**

19 Because it will inform the remand analysis, the Court will briefly review the
20 improperly weighed evidence.

21 **1. Dr. Chaudhary's Opinion.**

22 Dr. Chaudhary treated Plaintiff while she was a patient at Aurora Behavioral Health
23 from July 14, 2017 to August 16, 2017. Dr. Chaudhary's August 2017 opinion states that
24 Plaintiff suffered from profound depression, irritability, poor concentration, anxiety, and
25 an inability to function consistently. A.R. 627. The opinion states that Plaintiff could not
26 work. A.R. 628.

27 Dr. Chaudhary opined that Plaintiff was unable to meet competitive standards in
28 remembering work-like procedures; understanding and remembering short and simple

1 instructions; carrying out short and simple instructions; maintaining regular attendance and
2 punctuality; completing a normal work day and work week without interruption from
3 psychologically based symptoms; responding appropriately to changes in routine work
4 settings; and being aware of normal hazards and taking appropriate precautions. *Id.* Dr.
5 Chaudhary also opined that Plaintiff was seriously limited in her ability to maintain
6 attention for a two-hour work segment, sustain an ordinary routine, work in coordination
7 with or proximity to others without being distracted, ask simple questions or request
8 assistance, and get along with coworkers without unduly distracting them or exhibiting
9 behavioral extremes. *Id.*

10 Dr. Chaudhary opined that Plaintiff was unable to function or meet competitive
11 standards in her ability to understand, remember, and carry out detailed instructions; set
12 realistic goals; and deal with the stress of semiskilled or skilled work. A.R. 631. Plaintiff
13 was also limited in her ability to interact appropriately with the public, maintain socially
14 appropriate behavior, adhere to basic standards of neatness and cleanliness, travel in
15 unfamiliar places, and use public transportation. *Id.*

16 The ALJ afforded Dr. Chaudhary's opinion great weight for the period of disability
17 and no weight for everything after January 30, 2018. A.R. 24; 29. During Plaintiff's
18 disability, the ALJ found Dr. Chaudhary's opinion consistent with evidence that Plaintiff
19 was treated for depression, decreased appetite, sleep impairment, crying spells, and an
20 inability to function. A.R. 24 (citing A.R. 476). Despite intensive therapy and medication
21 management, Plaintiff had been hospitalized on four different occasions, for up to a month
22 at a time, over a course of 18 months. *Id.* (citing A.R. 534; 548; 602; 553; 598-600; 1494;
23 1532; 1386-87). The ALJ found Dr. Chaudhary's opinion not consistent with the record
24 as of January 30, 2018, citing a January 31 group therapy record stating that Plaintiff felt
25 fine and was observed as friendly, with a clean appearance. *Id.*

26 **2. Plaintiff's Testimony.**

27 Plaintiff testified that she was seeking treatment for major depressive disorder and
28 anxiety when she had a breakdown on New Year's Eve, 2015. A.R. 44. She was working

1 overnight as a morning show producer in New Orleans and felt a lot of stress that eventually
2 manifested in body pain and fatigue over the next few weeks. A.R. 45. She did not return
3 to work and was hospitalized in early 2016. *Id.* She completed two weeks of inpatient and
4 four weeks of outpatient therapy with a behavioral health facility. *Id.* at 46. She later
5 moved to an inpatient facility specializing in childhood trauma. A.R. 48-49. She
6 completed the program, working on her depression, anxiety, and PTSD, and lived in a
7 weekly rental until she was evicted in July 2017. A.R. 50. Plaintiff testified that following
8 her eviction she formed a plan to kill herself and was admitted to Aurora Behavioral Health,
9 Tempe. A.R. 51. She stayed in Aurora for a month. A.R. 51.

10 Plaintiff testified that she takes her life “day by day” because she never knows how
11 she will feel when she wakes up. *Id.* Some days she is more functional than others.
12 A.R. 53. She testified that she wakes up with a lot of pain in her legs and back and uses a
13 walker. A.R. 52-53. She attends group therapy at least four times a week as part of a
14 sixteen-hour program. A.R. 53. If she is not feeling fatigued, Plaintiff attends church on
15 Sundays. A.R. 54. She has trouble sleeping and wakes often in the middle of the night.
16 A.R. 55. She testified to getting about five to six hours of sleep each evening and sleeping
17 or laying down during the day. *Id.*

18 During the hearing, the ALJ asked Plaintiff if her mental and physical health had
19 improved, and she replied that it had because she was able to spend some time focusing on
20 her impairments without worrying about bills, rent, or employment. A.R. 60. Plaintiff also
21 testified that despite the improvement, she “has a long way to go.” A.R. 62.

22 The ALJ found Plaintiff’s testimony concerning the intensity, persistence, and
23 limiting effects of her symptoms to be generally consistent with the evidence from
24 December 31, 2015 to January 29, 2018. A.R. 26. But the ALJ found Plaintiff’s testimony
25 inconsistent with evidence after January 30, 2018 because her joint pain improved with
26 nonsteroidal inflammatory medication and her physical exams revealed normal motor
27 strength in upper and lower extremities, spine non-tender to palpation, no paraspinal
28 muscle spasm, and a negative straight leg raise. A.R. 31.

1 **3. Medical Improvement.**

2 The Commissioner bears the burden of establishing that a claimant has experienced
3 medical improvement that would allow her to engage in substantial gainful activity.
4 *Murray v. Heckler*, 722 F.2d 499, 500 (9th Cir. 1983). The ALJ found Plaintiff experienced
5 medical improvement as of January 30, 2018, citing a January 31, 2018 treatment note
6 from Recovery Innovations, Plaintiff’s housing and care provider. A.R. 1080. The note
7 followed a group session where members met to discuss their wellness goals. *Id.* During
8 the session, Plaintiff stated that she was “fine”; she was dressed in clean clothes and had a
9 clean appearance. *Id.* It appears Plaintiff spoke often, read aloud, and participated in the
10 general discussion about sugar. *Id.* The ALJ also found Plaintiff’s physical exams
11 reviewed “minimal to no objective findings.” A.R. 30. She cited two physical assessments
12 from February 2017 – one where the doctor noted improvement in Plaintiff’s aches and
13 pains after using nonsteroidal inflammatory medications (A.R. 711) and the other where
14 Plaintiff still had joint pain, stiffness, and body aches (A.R. 718). In both instances,
15 Plaintiffs’ general examination findings were unremarkable. A.R. 711,718.

16 The ALJ found that the medical improvement affected Plaintiff’s ability to work
17 because it affected her RFC. A.R. 30. The new RFC that was almost the same as the first
18 RFC, except that Plaintiff no longer needed to miss more than one day of work per month.
19 A.R. 31. Based on the new RFC and the VE’s testimony, the ALJ found that Plaintiff could
20 perform jobs that exist in significant number in the national economy. A.R. 32.

21 **D. The Remand.**

22 Plaintiff argues that the Court should remand for benefits because Dr. Chaudhary’s
23 opinion, credited as true, establishes that Plaintiff is disabled, and remand for further
24 proceedings would delay much needed income for Plaintiff while giving the Commissioner
25 a second chance. *Id.* at 13-14. The Commissioner argues that Plaintiff has not satisfied all
26 elements of the “credit as true rule,” and the record creates serious doubts as to Plaintiff’s
27 disability. Doc. 17 at 5.

1 **1. Legal Standard.**

2 “When the ALJ denies benefits and the Court finds error, the Court ordinarily must
3 remand to the agency for further proceedings before directing an award of benefits.” *Leon*
4 *v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017). Under a “rare exception” to this rule,
5 the Court may remand for an immediate award of benefits after conducting a three-part
6 inquiry:

7 First, the Court asks whether the ALJ failed to provide legally sufficient
8 reasons for rejecting evidence, whether claimant testimony or medical
9 opinion. Next, the Court determines whether there are outstanding issues
10 that must be resolved before a disability determination can be made, and
11 whether further administrative proceedings would be useful. When these
12 first two conditions are satisfied, [the Court] will then credit the discredited
testimony as true for the purpose of determining whether, on the record taken
as a whole, there is no doubt as to disability.

13 *Id.* (internal quotation marks and citations omitted). *Leon* emphasized that the Court has
14 discretion to remand for further proceedings even if it reaches the third step in the process.
15 *Id.* “Where an ALJ makes a legal error, but the record is uncertain and ambiguous, the
16 proper approach is to remand the case to the agency.” *Id.* (quotation marks omitted).

17 **2. Application.**

18 The parties agree that the ALJ failed to provide legally sufficient reasons for
19 rejecting the treating physician’s opinion and Plaintiff’s testimony, and to support the
20 ALJ’s finding of medical improvement. The first step is satisfied.

21 Under the second step, the Commissioner argues that there are outstanding issues in
22 the record because the January 31, 2018 treatment record shows that Plaintiff improved.
23 Doc. 17 at 6-7. The Commissioner argues that a remand is necessary to reevaluate this
24 evidence in the context of the record, reevaluate Plaintiff’s RFC, obtain supplemental
25 vocational expert evidence, and offer Plaintiff the opportunity for a new hearing to
26 complete the administrative record and issue a new decision. *Id.* at 8.

27 But there are no contradictions or gaps in the record. The January 31, 2018 notes
28 do not assess Plaintiff’s vocational abilities, nor do they even assess the severity of her

1 symptoms. The notes merely observe Plaintiff's interactions in group therapy and one on
2 one peer review on a single date. There is no evidence that Plaintiff's one-time success in
3 such a controlled setting indicates that she can function daily in an employment setting.
4 *See Hutsell v. Massanari*, 259 F.3d 707, 712 (8th Cir. 2001) ("[D]oing well for the purposes
5 of a treatment program has no necessary relation to a claimant's ability to work or to
6 claimant's work-related functional capacity."). Further, the notes are not provided by a
7 physician or examiner and therefore do not outweigh Dr. Chaudhary's assessed limitations.
8 *See Rodriguez v. Brown*, 876 F.2d 759, 763 (9th Cir. 1989) ("The ALJ's conclusion that
9 [claimant] was responding to treatment does not provide a clear and convincing reason for
10 disregarding [the treating physician's] opinion. No physician opined that any improvement
11 would allow [claimant] to return to work."). Indeed, Dr. Chaudhary's opinion
12 contemplates that Plaintiff would respond well to a highly structured setting. *See* A.R. 627.

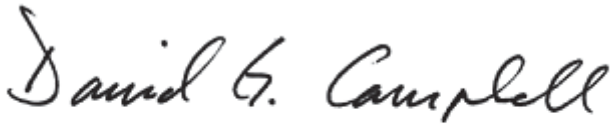
13 Further, Plaintiff's medical records note the normal wax and wane of mental health
14 symptoms, which could include periods of improvement before and after severe symptoms.
15 *See, e.g.*, A.R. 49 (Plaintiff testified that her time in a center helped her understand her
16 condition better and develop coping skills); 296 (2015 treatment note where Plaintiff
17 described her mood as calm); 306 (2015 treatment note stating that she was in a good
18 mood); *see also Garrison*, 759 F.3d at 1018 ("[W]hile discussing mental health issues, it
19 is error to reject a claimant's testimony merely because symptoms wax and wane in the
20 course of treatment."). Thus, isolated treatment notes reflecting Plaintiff's positive
21 condition on a single day do not contradict the severity of Plaintiff's reported symptoms or
22 assessment of her limitations. *See Garrison*, 759 F.3d at 1017 ("[I]t is error for an ALJ to
23 pick out a few isolated instances of improvement over a period of months or years and to
24 treat them as a basis for concluding a claimant is capable of working.").

25 The Court finds there are no factual gaps in the record or inconsistencies to explore
26 with further proceedings. Therefore, at step three, crediting Dr. Chaudhary's opinion and
27 Plaintiff's testimony as true, and reversing the ALJ's determination of medical
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1 improvement, the Court finds no serious doubts that Plaintiff's disability continued through
2 the present date.

3 **IT IS ORDERED** that the final decision of the Commissioner of Social Security is
4 **vacated** and this case is **remanded** for an award of benefits. The Clerk shall enter
5 judgment accordingly and **terminate** this action.

6 Dated this 20th day of February, 2019.

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10 David G. Campbell
11 Senior United States District Judge
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